



**UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/501,743	07/12/95	FAHIM	R 1038-517-MIS

SIM & MCBURNEY  
330 UNIVERSITY AVENUE  
SUITE 701  
TORONTO CANADA M5G 1R7

18M1/0227

EXAMINER

FRICKRIL, B

ART UNIT	PAPER NUMBER
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1817

DATE MAILED: 02/27/97

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/501,743

Applicant(s)

Fahim et al.

Examiner

Benet Prickril

Group Art Unit

1817



☒ Responsive to communication(s) filed on Jul 12, 1995

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire month(s), or thirty days ~~whichever is longer~~, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-42 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-42 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Election/Restriction*

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17, drawn to a process for preparing an agglutinin preparation from *Bordetella*, classified in class 436, subclass 543.
  - II. Claims 18-26, drawn to a composition of agglutinin 2 and 3, classified in class 424, subclass 240.1.
  - III. Claims 27-42, drawn to vaccines against *Bordetella* and methods of immunization, classified in class 424, subclass 253.1.
1. The inventions are distinct, each from the other because of the following reasons:
- Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process which includes shearing the cells to release the agglutinins and subsequent purification by precipitation with ammonium sulfate. Additionally the process as claimed can be used to make another materially different product such as a composition which includes agglutinin 1.

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Inventions II and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as for purification of antibodies to *Bordetella* agglutinogens from a sample.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II or III, and because Groups I and II have acquired a separate status in the art from Group III due to their different classification restriction for examination purposes as indicated is proper.

A telephone call was made to the office of Michael Stewart on 2/18/97 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

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***General information regarding further correspondence***

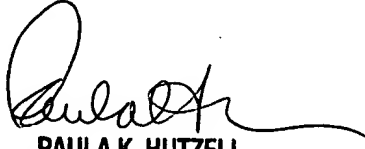
The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 1817.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benet Prickril, Ph.D., whose telephone number is (703) 305-5933. The examiner normally can be reached Monday through Thursday between 7:30 AM and 5:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Hutzell, Ph.D., can be reached at (703)308-4310. The fax phone number for Art Unit 1817 is (703) 305-7939.

Any inquiry of a general nature, or relating to the status of this application, should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Benet Prickril, Ph.D.  
February 19, 1997

  
**PAULA K. HUTZELL**  
**SUPERVISORY PATENT EXAMINER**  
**GROUP 1800**